

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 34 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SRIKANT D PATHAK

Versus

BACHURAM SHAMBHURAM AGRAWAL

Appearance:

MR PRANAV G DESAI for appellant.
NOTICE SERVED for Respondent No. 1
MRS QUEROBINA YAGNIK for Respondent No. 2
Mr. B.D. Desai,APP for Respondent No. 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 05/12/2000

ORAL JUDGEMENT

Food Inspector, Vadodara Municipal Corporation,
by filing this appeal, has challenged the legality and
validity of the order dated February 13, 1989 rendered by
the learned Judicial Magistrate (F.C.) (Municipal),
Vadodara, in Criminal Case No. 1605 of 1986 whereby
learned Magistrate acquitted the respondents No. 1 & 2

from the charges framed under Section 2(A) and 7(1) and 16(1)(a) of the Prevention of Food Adulteration Act, 1954 (to be referred to as "the Act" for short). Appellant who was duly authorised to act as Food Inspector within the limits of Vadodara Municipal Corporation on January 13, 1986 inspected the restaurant run by respondent No.1 situated at Sayajiganj locality. The appellant had taken sample of turmeric powder in the quantity of 600 grams in presence of a panch. The quantity of 600 grams was divided in 3 parts and each part was filled in one glass bottle. After following the usual procedure the bottles of sample of turmeric powder were sealed under Panchnama. The appellant paid the price of 600 gms. of turmeric powder to respondent No.1. The said bottles were sent to Public Analyst for analysis. According to the report of the Public Analyst the said samples of turmeric powder did not conform to the standard prescribed under the Act. After obtaining the required sanction under Section 20 of the Act, the appellant filed complaint against the respondents in the Court of learned Judicial Magistrate (F.C.), Vadodara, which came to be numbered as Criminal Case No. 1605 of 1986. The respondents No. 1 & 2 had filed an application before the learned Magistrate to send one bottle of sample of turmeric powder to the Central Food Laboratory and accordingly one bottle of sample of turmeric powder was sent to Central Food Laboratory as per Section 13(2) of the Act.

2. The appellant was examined by the learned Magistrate at Exhibit 14. After recording of the evidence of the appellant, charge Exhibit 42 came to be framed against the respondents No. 1 & 2. Charge was read over and explained to the respondents and they pleaded not guilty and claimed to be tried. One Ghanshyambhai Jamnadas who was the panch present at the time of drawing of the panchnama and collection of sample from the shop of respondent No.1 was examined at Exhibit 53.

3. The learned Magistrate, after considering the oral as well as documentary evidence, acquitted the respondents No. 1 & 2 from the charges framed against them mainly on the ground that there was no valid sanction obtained before filing prosecution against the respondents. Learned Magistrate had acquitted the respondents No. 1 & 2 also on the ground that the appellant was not legally appointed as Food Inspector as per the provisions of Section 9 read with Rule 8 of the Prevention of Food Adulteration Rules, 1955 (to be referred to as "the Rules"). The order of acquittal rendered by the learned Magistrate is under challenge by

the appellant in this appeal.

4. Learned Counsel, Mr. Pranav G. Desai and learned counsel for the respondents had taken me through the entire evidence produced at the trial. Having heard the arguments of the learned counsel, I am of the opinion that the order of acquittal recorded by the learned Magistrate deserves to be confirmed, not on the ground of there being absence of valid sanction or the Food Inspector was not duly appointed under the provisions of the Act or Rules, but on the ground, that there was breach of mandatory Rule 14 of the Rules and there was also clear breach of mandatory provisions of Section 13(2) of the Act read with Rule 4 of the Rules. The evidence of appellant recorded in trial did not establish that the bottles in which sample was collected were cleaned or dried. In absence of any satisfactory evidence, in my view, there was clear breach of Rule 14 of the Rules. In 1999 (2) F.A.C. Page 201, the learned Single Judge of this Court has ruled that it is the duty of the prosecution to lead reliable and cogent evidence to satisfy the Court that for collecting sample, clean and dry bottles were used. If such evidence is lacking then it would be in clear breach of Rule 14 of the Rules and therefore the whole prosecution case is liable to be rejected on that ground alone. In the same decision, it is also ruled that it is the duty of the Court to ascertain that mark and seal or fastening are intact when the sample bottle is sent by the Court to the Central Food Laboratory on an application made by an accused person. In this case, there was no sufficient material before the Court to satisfy the mandatory requirement provided in Section 13(2)(b) of the Act read with Rule 4 of the Rules. Having minutely gone through the evidence of the appellant and the material produced on the record of this case, I am satisfied that the procedure provided in Rule 14 of the mandatory Rules was not followed. There was also breach provision under Section 13(2)(b) read with 2 (A) of the Act. Hence, the acquittal of the respondents No. 1 & 2 deserves to be confirmed for the breach of the above stated Rules.

5. As a result of the foregoing discussion, this appeal is dismissed.

rmr. =====